

REMARKS

I. Status of the Claims

Claims 1-24, 43-47, 56, 57, and 60-102 are pending. No claims are amended herein.

II. Rejections under 35 U.S.C. § 103(a)

A. Claims 1-3, 43, 44, 56, 57, and 60-102 in view of Cottard

The Examiner rejects claims 1-3, 43, 44, 56, 57, and 60-102 under 35 U.S.C. § 103(a) for allegedly “being unpatentable over” U.S. Patent Application Publication No. 2001/0023515 A1 to Cottard et al. (“Cottard”). See July 3, 2007, Office Action at 2-4. Applicants respectfully disagree and continue to traverse the rejection for reasons of record and the following additional reasons.

In the Office Action, the Examiner repeats the assertion of record that the presently claimed weight ratio between the at least one aminosilicone and the at least one associative polymer would have been obvious. See *id.* at 3-4. Specifically, the Examiner asserts that it would have been obvious “to formulate a dyeing composition having the claimed weight ratio between aminosilicone compounds and associative polymers because the reference clearly teaches and disclose[s] a composition comprising an effective quantity of organomodified silicone (aminosilicone) (see page 17, paragraph, 0337) and associative polymers such as cationic polymers in the claimed amounts (see page 4, paragraph, 0104).” *Id.* The Examiner concludes on this basis that one skilled in the art would have been motivated “to optimize the ratio between these dyeing ingredients in the composition in order to get the maximum effective amounts and would expect such a composition to have similar properties to

those claimed, **absent unexpected results.**” *Id.* at 4 (emphasis added). The Examiner further explains that “the criticality of the claimed ratio” has not been established. *See id.*; *see also id.* at 8 (“In this case applicant has not shown on record the criticality of the claimed ratio in the claimed composition.”). Finally, the Examiner expressly invites Applicants to provide data based on the criticality of the weight ratio of the at least one aminosilicone to the at least one associative polymer demonstrating that the claimed composition provides unexpected results over the composition of the closest prior art of record. *See id.* at 9.

Applicants continue to traverse this rejection for the reasons of record. In particular, Cottard does not teach or suggest the claim limitation of the weight ratio of the at least one aminosilicone to the at least one associative polymer, a fact that the Examiner has admitted. *See* Oct. 28, 2005, Office Action at 3. Moreover, Cottard does not identify or appreciate the weight ratio as a “result-effective parameter,” and, thus, contrary to the Examiner’s position, one skilled in the art would not have been motivated to optimize the weight ratio between the aminosilicone compounds and the associative polymers. *See* M.P.E.P. § 2144.05(II)(B) (“A particular parameter must first be recognized as a result-effective variable . . . before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation.”); *see also Ex parte Beer*, Appeal No. 1996-0044, 1996 WL 1748764, at *2 (Bd. Pat. App. & Int. Apr. 15, 1999) (“The determination of a specific parameter can be an obvious expedient only when the art **appreciates** that said parameter is a result effective variable.”) (emphasis added).

In an effort, however, to expedite prosecution, and in response to the Examiner's request for evidence, Applicants submit herewith a Rule 1.132 Declaration of Isabelle SCHLOSSER ("Schlosser Declaration"), which establishes unexpectedly improved results due to the claimed ratio. Specifically, the tests in the Schlosser Declaration demonstrate, for two types of dyeing compositions containing the ingredients as claimed, that a weight ratio of aminosilicone to associative cationic polymer greater than 1 unexpectedly improves the selectivity of the composition as compared with two identical compositions that use a weight ratio less than 1. See Schlosser Declaration at ¶ 6 (Tables I and II) and ¶¶ 13-15. Selectivity is an important parameter, which measures the difference of color obtained after dyeing hair locks that are unevenly sensitized. See *id.* at ¶ 12. It is representative of the difference of color that will be obtained between the end and the roots after dyeing real sensitized hair. See *id.*

In addition to all of the deficiencies of the Examiner's rejection summarized above and in the previously-filed responses, Cottard does not suggest the improved selectivity of the claimed invention used the claimed weight ratio. Thus, Applicants submit that the experimental results in the Schlosser Declaration further demonstrate the unexpectedly improved properties of the presently claimed invention over the prior art, which does not remotely suggest such properties. See Schlosser Declaration at ¶ 16. Accordingly, the Examiner has not established a *prima facie* case of obviousness.

Accordingly, for at least these reasons, the Examiner has not made a *prima facie* case of obviousness with respect to claims 1-3, 43, 44, 56, 57, and 60-102 in view of Cottard, and Applicants respectfully request that the rejection be withdrawn.

B. Claims 4-24 in view of Cottard and Legrand, and Claims 45-47 in view of Cottard and Laurent

The Examiner rejects claims 4-24 under 35 U.S.C. § 103(a) for allegedly “being unpatentable over” Cottard in view of U.S. Patent Application Publication No. 2003/0140429 A1 to Legrand et al. (“Legrand”). See July 3, 2007, Office Action at 4-5. The Examiner also rejects claims 45-47 under 35 U.S.C. § 103(a) for allegedly “being unpatentable over” Cottard in view of U.S. Patent Application Publication No. 2002/0046431 A1 to Laurent et al. (“Laurent”). See July 3, 2007, Office Action at 5-6. Applicants respectfully disagree and traverse these rejections for the reasons of record and the following additional reasons.

Claims 4-24 and 45-47 depend, either directly or indirectly, from claim 1, and, thus, require all the limitations of claim 1, including the claimed weight ratio of the at least one aminosilicone to the at least one associative polymer. As discussed above, Cottard does not teach or suggest the claimed weight ratio. Further, Cottard does not identify or appreciate the weight ratio as a “result-effective parameter,” and, thus, one skilled in the art would not have been motivated to optimize the weight ratio. Moreover, the Schlosser Declaration, submitted herewith, demonstrates the unexpected improved results due to the claimed weight ratio. Neither Legrand nor Laurent cures these deficiencies, as one skilled in the art reading these references would not have expected that the claimed composition with the claimed weight ratio to have such improved selectivity.

Accordingly, the Examiner has not made a *prima facie* case of obviousness with respect to claims 4-24 in view of Cottard and Legrand and claims 45-57 in view of

Cottard and Laurent. Applicants, therefore, respectfully request that the Examiner withdrawn these rejections.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

If the Examiner believes a telephone conference could be useful in resolving any of the outstanding issues, he is respectfully urged to contact Applicants' undersigned counsel at 202-408-4152.

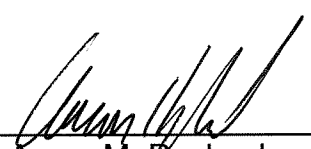
Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 30, 2007

By: _____


Aaron M. Raphael
Reg. No. 47,885

Attachment: Declaration under 37 C.F.R. § 1.132 of Isabelle SCHLOSSER